

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
The Pay Telephone Reclassification and	)	CC Docket No. 96-128
Compensation Provisions of the	)	
Telecommunications Act of 1996	)	
	)	
RBOC/GTE/SNET Payphone Coalition	)	File No. NSD-L-99-34
Petition for Clarification	)	
	)	

**REPLY COMMENTS OF THE  
ASSOCIATION OF COMMUNICATIONS ENTERPRISES**

The Association of Communications Enterprises (“ASCENT”), through undersigned counsel, hereby responds to the comments of other parties on the various petitions for clarification, declaratory ruling and/or reconsideration filed in the captioned docket. Like ASCENT, the vast majority of commenters oppose WorldCom’s proposal that the Commission modify its definition of “completed call”. For the reasons set forth below, ASCENT again urges the Commission to deny WorldCom’s request as procedurally and substantively inappropriate. Similarly, ASCENT agrees with those commenters who criticize AT&T’s policy of overcompensating payphone service providers (“PSPs”) at the expense of resale carriers and therefore joins them in urging the Commission to reject AT&T’s petition, which asks the Commission to sanction its unilateral rule change and its continued refusal to take any internal steps to accurately identify the amount of payphone compensation owed PSPs. Whether viewed as an untimely request for reconsideration of the Commission’s conclusion in the *Report and Order* in this proceeding<sup>1</sup> that “a completed call is

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<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541 (1996) (“Report and Order”).

a call that is answered by the called party,”<sup>2</sup> or a request that the Commission sanction the elevation of AT&T’s convenience over the statutory scheme decreed by Congress, AT&T’s request must be rejected.

ASCENT also joins those commenters supporting Global Crossing’s “timing surrogate” proposal as a potentially simple solution of the challenge of ensuring that carriers will be subject to per-call compensation obligations only on completed calls notwithstanding the inability of network service providers in all instances to track through a call to completion. With further industry input, it should be possible to identify the appropriate call duration which would most reliably indicate a call has been completed to the intended recipient in those circumstances where a call must transit an intermediate switch and the network service provider would otherwise be unable to determine whether the call has been completed for purposes of Section 276. Certain commenters, however, suggest that technology is presently available to network service providers which would enable them to track such calls.<sup>3</sup> Obviously, if such technology exists, and could be utilized by network service providers to accurately track all calls, this option might make a “call timing” surrogate the less optimal choice. Whether it does so would depend upon a number of very specific technical findings surrounding the systems and operational limitations of such technology.

If, for example, only limited technology is available such that only a small percentage of presently untrackable calls could be tracked, if the margin for error is deemed unreasonably high by the Commission, or if such measures can only be implemented at exorbitant costs to network service providers (and then unavoidably passed through to switch-based carriers), adoption of Global Crossing’s “call timing” surrogate might still represent the more rationale short-term (or even permanent) solution.

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<sup>2</sup> Id. at ¶ 63.

<sup>3</sup> *See, e.g.,* Comments of CommuniGroup of K.C., Inc., et al. (“CommuniGroup”), pp. 7-12.

The Commission does not yet have access to sufficient information to reach definitive conclusions on the benefits and limitations of the “call timing” surrogate or the availability, benefits and limitations of call tracking technologies. Even if a “call timing” surrogate is ultimately adopted as one short-term solution to the payphone compensation morass, however, the Commission should remain mindful, as it develops a full record on these issues, that there will still be circumstances under which certain carriers may wish to pursue other avenues of satisfying their payphone compensation obligations. Certain commenters urge the adoption of rather draconian measures which may render the option of compensating PSPs directly too costly for most carriers, thereby unduly limiting carriers’ options for satisfying payphone compensation obligations.<sup>4</sup> The Commission should refrain, as it attempts to bring order to the admittedly chaotic present payphone compensation regime, from mandating the imposition of disparate burdens upon certain market participants to the benefit of others. In short, as the Commission considers the various options available presently or on a going-forward basis, a balancing of interests will continue to be required.

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<sup>4</sup> See, e.g., Comments of APCC, Attachment 1, “Proposed Amendment to the FCC’s Compensation Rules.”

As noted above, WorldCom's request for a modification of the definition of "completed call" is virtually without support among the commenters. Only one entity, the American Public Communications Council ("APCC"), representing the interests of PSPs, supports "allowing carriers to treat calls completed to resellers as compensable" without regard to whether those calls are actually completed to the intended recipient. APCC asserts that this reversal of the existing rule will result in a "substantially simplified compensation system, with reduced carrier costs and a more accurate count of compensable calls."<sup>5</sup> APCC is only partially correct: disregarding whether a call is actually completed would lead to a simplified, but undeniably inequitable compensation system.

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<sup>5</sup>

Id., p. 2.

Neither would the “simplified” regime advocated by APCC result in a more accurate calculation of the number of calls for which per-call compensation is owed pursuant to Section 276. “The Commission’s rules – as they now stand – only require that compensation be paid to PSPs on calls that are actually completed to the intended recipient.”<sup>6</sup> Thus, to simplify the per-call compensation regime in the manner advocated by APCC would require nothing short of a rule change. Despite styling its request as a petition for reconsideration of the *Second Report and Order*, it is abundantly clear to the commenters that WorldCom seeks nothing less. The appropriate course for seeking reversal of the Commission’s determination that “a ‘completed call’ is a call that is answered by the called party,”<sup>7</sup> announced in the *Report and Order* and now hopelessly beyond the 30-day filing deadline for a petition for reconsideration,<sup>8</sup> could only be a rulemaking proceeding. Thus, APCC’s bald support for WorldCom’s request notwithstanding, the Commission cannot modify the existing “completed call” definition, and thus the application of the rule, without a rulemaking proceeding.

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<sup>6</sup> Comments of Global Crossing, p. 2.

<sup>7</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Report and Order), 11 FCC Rcd. 20541 (1996), ¶ 63.

<sup>8</sup> 47 C.F.R. § 1.429(d). The Commission has also made clear that “[t]he filing date for petitions for reconsideration in a notice and comment rulemaking proceeding is prescribed in section 405 of the Act. 47 U.S.C. § 405(a). The Commission lacks discretion to waive this statutory requirement.” Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, as amended (Second Order on Reconsideration), 14 FCC Rcd. 15550 (1999), ¶ 132. In any event, WorldCom’s request is not appropriate as the subject matter of a petition for reconsideration because the Commission will not consider a petition for reconsideration in which the position advanced has been “previously considered and denied and the arguments raised by petitioners were the same as those the Commission considered and rejected” and where “although styled as [a] petition[] for reconsideration of” a later-released order is “actually [a] petition[] for reconsideration of” an earlier-released order. Amendment of the Amateur Service Rules to Revise Transmitter Power Standards and Authorized Emissions (Memorandum Opinion and Order), 6 FCC Rcd. 4433 (1991), ¶¶ 3, 5.

Opposition to the substance of WorldCom's request is vociferous.<sup>9</sup> Echoing ASCENT's concerns, the RBOC Payphone Coalition urges the Commission to "reject WorldCom's suggestion that it modify the definition of completed call to include any call that hits a reseller's switching platform" because the "proposal would arguably create unfair distinctions between switch-based resellers and facilities based carriers."<sup>10</sup> Qwest Communications International, Inc. ("Qwest") also "opposes WorldCom's request that calls completed to the SBR/platform be defined as 'completed' calls for purposes of paying per call compensation, regardless of whether the calls are completed to the calling party,"<sup>11</sup> as does Global Crossing Telecommunications, Inc. ("Global Crossing"). Lumping together the AT&T and WorldCom proposals, Global Crossing observes two primary "undesirable effects" which would flow from adoption of the "AT&T/Worldcom proposal",

- (1) it would result in payphone service providers ('PSPs') being grossly overcompensated as they would be compensated for numerous uncompleted calls;
- and (2) it would put FBRs at a major competitive disadvantage by being forced to absorb the costs of paying compensation for all calls that are handed-off to them."<sup>12</sup>

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<sup>9</sup> See Comments of TelStar International, Inc. ("Telstar"), pp. 2-4; One Call Communications, Inc. ("One Call"), p. 2; IDT Corporation ("IDT"), p. 7; Network Enhanced Telecom, LLP ("NET"), p. 2; International Prepaid Communications Association ("IPCA"), pp. 5-6; Intellicall Operator Services, Inc. ("Intellicall"), pp. 3-4; CenturyTel Long Distance ("CenturyTel"), p. 1.; Flying J Inc. and TON Services, Inc. ("Flying J"), pp. 3-6; Ad Hoc Resellers Coalition ("AHRC"), p. 2; VarTec Telecom, Inc. ("VarTec"), p. 4; CommuniGroup, pp. 4-7

<sup>10</sup> Comments of the RBOC Payphone Coalition, p. 2.

<sup>11</sup> Comments of Qwest, p. 2.

<sup>12</sup> Comments of Global Crossing, p. 2.

AT&T's request for "clarification" or "reconsideration" also meet with justifiable opposition from commenters. As Telstar observes, "AT&T's proposal is the *de facto* equivalent of WorldCom's new proposed definition because it requires resellers to pay per call compensation for uncompleted calls."<sup>13</sup> Through its unilaterally-imposed policy AT&T has effectively enacted and enforced this rule change, without actually seeking a rule change and without seeking FCC approval of a process which undeniably overcompensates PSPs and overcharges resale carriers until this late stage in the game.

IDT harshly criticizes AT&T's policy and suggests, not unrealistically, that

[b]ased on the company's admissions that it 'calculate[d] its payphone compensation payments on the (knowingly incorrect) assumption that all calls that complete to the reseller's platform are completed to the called party and thus compensable, it seems likely that AT&T 'passed along' these charges to their SBR customers. If this is the case, the Commission should find such intentional, egregious and repeated contact represents unjust and unreasonable business practices within the meaning of 47 USC § 201(b) and take appropriate action.<sup>14</sup>

As IDT notes, "AT&T does not challenge the Commission's interpretation of a 'completed call.' Instead, it seeks affirmation that its compensation regime, which is utterly and completely in opposition to the Commission's interpretation, is actually consistent with the Commission's rules."<sup>15</sup> ASCENT agrees that AT&T seeks neither clarification nor reconsideration, but rather Commission acquiescence to a unilaterally imposed compensation regime which could only result in the overcompensation of payphone service providers at the expense of switch-based carriers. Admitting that an "assumption that all calls that complete to the reseller's platform are completed to the called party" is "incorrect", AT&T downplays the extent of the overcompensation.

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<sup>13</sup> Comments of Telstar, p. 8.

<sup>14</sup> Comments of IDT, p. 40.

<sup>15</sup> Id., p. 34.

As the comments reveal, a very high percentage of calls are uncompleted; under AT&T's procedure (unlike under the Commission's rules), these calls would nonetheless be subject to payphone compensation. According to CenturyTel, "thirty (30) percent or more of domestic, long distance calls are not completed for various reasons;" Global Crossing states that "only approximately 65% of its retail traffic is actually completed to the intended recipient,"<sup>16</sup> and Telstar points out that "over 95% of the attempted calls placed by Telstar customers are to overseas points, most with completion rates of between 10 and 30%."<sup>17</sup> Thus, not by virtue of an actual rule change, but rather by means of an effective rule change, AT&T has been engaging for some time – and without the acquiescence of the Commission – in a regime of gross overcompensation to payphone service providers. ASCENT agrees with ILD out, "[i]t would be a mistake to conclude that AT&T has not illegally billed its SBR customers for uncompleted calls."<sup>18</sup> From AT&T's acknowledgment that it has made no effort to implement procedures pursuant to which it may determine the actual number of calls completed from payphones, it follows that it would be impossible for AT&T to recover accurate payphone compensation costs from its resale carrier customers.

Furthermore, the timing of AT&T's request strongly suggests that the carrier asks for Commission "clarification" that it may ignore the tenor of the statutory scheme decreed by Congress and impose excessive costs on competing carriers only because following issuance of the *Second Report and Order* it is now faced with a Commission mandate that it provide certain very basic information necessary to calculating of the level of PSP compensation owed by individual carriers. The Commission should reject AT&T's request and issue a definitive statement that such unilateral action will not be tolerated. This is fully in accord with the Commission's policy of prohibiting

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<sup>16</sup> Id., p. 4.

<sup>17</sup> Comments of Telstar, p. 11.

<sup>18</sup> Comments of ILD, p. 4.



regulated entities from engaging in unilateral actions which have the effect of nullifying Commission rules.

In addressing criticisms of Nevada Bell's "attempt to modify the Commission's adopted formula methodology" in connection with pole attachment rates, the Commission

decline[d] to waive our existing methodology . . . We believe that this formula is consistent with Congressional intent to provide a fair but expeditious methodology for calculating just and reasonable pole attachment rates.<sup>19</sup>

In the present context, imposing payphone compensation obligations only upon "a call that is answered by the called party" is a fair and expeditious methodology for calculating just and reasonable payphone compensation. By contrast, AT&T's procedure, which admittedly imposes compensation obligations on as many as one-third of all attempted calls which are not rightfully the subject of per-call compensation obligations, cannot be reconciled with the Congressional directive that "payphone service providers are [to be] fairly compensated for each and every *completed* intrastate and interstate call using their payphone."<sup>20</sup>

The Commission has on numerous other occasions voiced its disfavor of unilateral actions. Thus, for example, the Commission has

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<sup>19</sup> Nevada State Cable Television Association v. Nevada Bell (Order), 13 FCC Rcd. 16774 (1998), ¶ 15.

<sup>20</sup> 47 C.F.R. §276(b)(1)(A).

reject[ed] the request of Sprint . . . that we allow the incumbent LEC unilaterally to suspend service from the carrier causing interference, because this would be tantamount to allowing incumbent LECs to suspend all service deployment suspected of causing or contributing to degradation of service . . . therefore, we reiterate, as we do below, that incumbent LECs must comply with the process that we set out, rather than taking unilateral action against allegedly interfering competitive LEC data services.<sup>21</sup>

It has also held that a carrier “was not entitled, however, simply to refuse payment to the BOC at its own unilateral discretion,” and “it would be bad public policy” to

give the long-distance company unilateral authority to evaluate the certifying BOC’s compliance with Commission rules, and thereby determine when the long distance company became obligated to make payments pursuant to those rules. We see no public policy or legal basis for the Commission to delegate to the IXC payors sole authority to determine compliance with the Commission’s rules.<sup>22</sup>

Consistent with the foregoing, ASCENT suggests there is no public policy or legal basis for the Commission to delegate to AT&T authority to determine the amount of carrier payment obligations without regard to Section 276 or the Commission’s rules.

Finally, as CenturyTel notes, and as AT&T makes no attempt to hide, “AT&T acknowledges that its process is ‘ . . . clearly favorable to PSPs. . . ’, [yet] fails to point out that this is at the expense of the switch-based resellers.”<sup>23</sup> In its children’s television programming proceeding, the Commission addressed an analogous situation, holding there that

the Act does not justify differentiating among affected parties on their mode of program acquisition. Given the already uncertain economic climate for broadcasters, we are hesitant to create a regulatory regime that may unintentionally favor one

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<sup>21</sup> Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (Third Report and Order, Fourth Report and Order), 14 FCC Rcd. 20912 (1999), note 479.

<sup>22</sup> Bell Atlantic-Delaware v. Frontier Communications Services; and Ameritech Illinois, Pacific Bell v. Frontier Communications Services (Order on Review), 15 FCC Rcd. 7475 (2000), ¶¶ 7, 8.

<sup>23</sup> Comments of CenturyTel, p. 4.

industry group, to the ultimate detriment of the public.<sup>24</sup>

Neither should the Act sanction AT&T's policy decision which will make one class of carriers, non-facilities-based carriers, subject to "excessive costs" not imposed by statute for the sole purpose of allowing AT&T to avoid taking steps to identify the actual amount of payphone compensation owed.

Consistent with the above, ASCENT urges the Commission to reject WorldCom's request for a redefinition of "completed call" and to direct AT&T to cease its unilateral imposition of payphone compensation obligations in excess of those mandated by statute and Commission rule.

ASCENT also urges the Commission to take additional steps to amass information sufficient to reach definitive conclusions regarding the benefits and limitations of both "call timing" surrogates and potential additional call tracking technologies in the development of either interim or ultimate measures necessary and appropriate to the implementation of the directives set forth in Section 276.

Respectfully submitted,

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<sup>24</sup> Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Standards (Order), 6 FCC Rcd. 5529 (1991), ¶ 4.

## **CERTIFICATE OF SERVICE**

I, Catherine M. Hannan, do hereby certify that a true a correct copy of the foregoing Reply Comments of the Association of Communications Enterprises has been served by the First Class Mail, postage prepaid, on the individuals listed below, on this 22nd day of October, 2001:

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